

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54501; File No. SR-NASDAQ-2006-026)

September 25, 2006

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change as Amended Regarding Pricing for Non-Members Using the New Nasdaq Workstation and Weblink ACT

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 1, 2006, The NASDAQ Stock Market LLC (“Nasdaq”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq amended the proposed rule change on September 20, 2006.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons, and simultaneously granting accelerated approval of the proposed rule change, as amended.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change relates to the pricing for non-Nasdaq members using Nasdaq’s New Nasdaq Workstation (“NNW”) and Weblink ACT products. The proposal will apply to these non-members the same changes that Nasdaq is instituting for Nasdaq members in SR-NASDAQ-2006-025. Nasdaq seeks to implement this proposed rule change retroactively as of August 1, 2006. The text of the proposed rule change is

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Amendment No. 1.

available at the Commission's Public Reference Room, at Nasdaq, and at www.nasdaq.com.⁴

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In SR-NASDAQ-2006-025, Nasdaq amended Rule 7015 to change Nasdaq member fees associated with its Web-based NNW and Weblink ACT products. Since the NNW's inception as a replacement for the Nasdaq Workstation II ("NWII") last year, the fee for the NNW has been \$435 per user per month, plus \$90 per month for data feeds included with the NNW, for a total cost of \$525 per user per month. In SR-NASDAQ-2006-025, Nasdaq reduced the fee to \$475 per user per month, including the cost of the data feeds provided with the NNW. The change is designed to enhance the competitiveness of the NNW in contrast to front-end applications provided by broker-

⁴ Changes to the proposed rule text are marked to the rule text that appears in the electronic Nasdaq Manual found at www.complinet.com/nasd.com, as further amended on an immediately effective basis by SR-NASDAQ-2006-024 and SR-NASDAQ-2006-025. Because the NNW and Weblink ACT are also used with respect to the quotation, execution, and trade reporting systems operated by The Nasdaq Stock Market, Inc. ("Nasdaq Inc.") with respect to non-Nasdaq securities, Nasdaq Inc. is also filing this proposed rule change as a modification to NASD Rule 7010(f). See SR-NASD-2006-095.

dealers and service bureaus, and, as discussed below, also reflects decreasing demand for the product.

Weblink ACT, also referred to as Nasdaq Workstation Post Trade, is a Web-based application used for submission of trade reports. As such, as the Nasdaq Exchange begins to operate as a national securities exchange, Weblink ACT provides basic front-end access to the Trade Reporting Facility (“TRF”) operated by Nasdaq and the NASD,⁵ as well as access to ACT functionality still offered by Nasdaq Inc. under authority delegated by NASD.

Since the introduction of NNW and Weblink ACT, a number of former NWII users have opted to move to Weblink ACT rather than NNW, reflecting a desire to use these Web-based products exclusively for trade reporting, rather than active trading. Accordingly, in SR-NASDAQ-2006-025, Nasdaq increased the comparatively low fees for Weblink ACT to ensure that, as between NNW and Weblink ACT, fees are allocated appropriately to allow recovery of Nasdaq’s costs. Specifically, the current \$150 fee for Weblink ACT users that report a daily average of 20 or fewer trades a month is being raised to \$200, while the \$300 fee for higher volume users is being increased to \$375.

Nasdaq is submitting this filing to apply the foregoing changes to non-Nasdaq members using the NNW and Weblink ACT. These non-members are comprised primarily of service bureaus, while in the case of Weblink ACT, they would also include NASD members that are not members of Nasdaq but that submit trade reports to the TRF.

⁵ Nasdaq expects that, consistent with current practice, most NASD members seeking access to the TRF would use a proprietary front-end system developed by the broker-dealer or a product offered by a service bureau. Weblink ACT is designed as a basic front-end system for low volume users.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁶ in general, and with Section 6(b)(4) of the Act,⁷ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls. The proposed rule change applies to non-members that use NNW and Weblink ACT a fee change that is being implemented for Nasdaq members. Accordingly, the proposed rule change promotes an equitable allocation of fees between members and non-members using these services.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4).

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2006-026 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2006-026. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal offices of NASDAQ. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2006-026 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to an exchange.⁸ Specifically, the Commission believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁹ which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facilities or system which it operates or controls.

The Commission notes that this proposal would permit the schedule for non-Nasdaq members to mirror the schedule applicable to Nasdaq members that became effective on August 1, 2006, pursuant to SR-NASDAQ-2006-025.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice thereof in the Federal Register. The proposed fees for non-Nasdaq members are identical to those in SR-NASDAQ-2006-025, which implemented those fees for Nasdaq members and which became effective as of August 1, 2006. The Commission notes that the instant proposed rule change will promote consistency in Nasdaq's fee schedule by applying simultaneously the same pricing schedule for Nasdaq members and non-Nasdaq members alike. Therefore, the Commission finds that there is good cause, consistent with Section 19(b)(2) of the Act, to approve the proposed rule change, as amended, on an accelerated basis.

⁸ In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(4).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NASDAQ-2006-026), as amended, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Nancy M. Morris
Secretary

¹⁰ 17 CFR 200.30-3(a)(12).